IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.38/2001

State
through Pernem Police Station. ..... Appellant.

V/s.

1. Shri Savlaram D. Harmalkar,
major of age, residing near
Pimpal, Karaswadda, Mapusa, Goa.

2. Shri Ibrahim Mathew, aged
43 years, r/o. Sanquelim, Goa.

3. Shri Sharanappa Shantappa
Reddy, aged 28 years, r/o. Moitem,
Assnora, Bicholim, Goa.

4. Shri Dashrath Bhikaji Pawar,
aged 28 years, residing at Moitem,
Assnora, Bicholim, Goa.

5. Shri Dayanand Bhikaji Pawar,
aged 29 years, residing at
Moitem, Assonora, Bicholim, Goa.

6. Shri Anand Vassudeo Gaonkar,
aged 33 years, residing at Moitem,
Assonora, Goa.

7. Shri Gaudappa Vassangaudapta
Girdar, r/o. Mapusa, Goa (expired)

8. Shri Gangaram Chandry Jadav,
aged 25 years, r/o. Moitem,
Assnora.

9. Shri Shankarappa Kallappa Sawant,
aged 35 years, r/o. Moitem,
Assnora.

10. Shri Sudarshan Patil,
aged 40 years,

11. Shri Mallyasha Valsappa
Warang, aged 35 years,
r/o. Moitem, Assnora. .... Respondent.

Ms. Winnie Coutinho, Addl. Public Prosecutor for the
State/appellant.

Ms. C. Collasso, Advocate for respondent No.1

CORAM : P.V. HARDAS, J.

DATE : OCTOBER 3, 2003.

ORAL JUDGMENT :

The State being aggrieved by the Judgment of the learned Additional Sessions Judge, Mapusa, dated 29th August, 2000 in Criminal Appeal No.50/1999, reducing the sentence of Simple Imprisonment for six months and fine of Rs.500/- passed by the learned Judicial Magistrate, First Class, Pernem by Judgment dated 2.11.1999 in Criminal Case No.43/S/96, has filed the present appeal, seeking enhancement of the sentence passed by the learned lower appellate Court. Respondent No.1 herein had filed a Criminal Appeal No.50/1999, assailing his conviction and sentence. The other accused, namely the present respondents No.4, 5 and 6 had not chosen to file any appeal. In the appeal filed by respondent No.1 herein, the lower appellate Court sentenced the accused to Simple Imprisonment till rising of the Court and to pay a fine of Rs.500/-, in default, Simple Imprisonment for 7 days. The State being aggrieved thus by the order of the learned lower appellate Court, has filed the present appeal. Since the State is seeking enhancement of sentence in respect of respondent No.1 only, respondents Nos.2 to 11 are not necessary parties to the appeal and the names of the

respondents No.2 to 11 stand deleted.

2. With the assistance of the learned Counsel for the parties, I have perused the Judgment of the learned lower appellate Court. The learned lower appellate Court, in paragraph 10, has come to the conclusion that there was sufficient evidence to hold that the respondent No.1 herein/appellant therein had criminal intention in committing theft along with the co-accused and the absconders. The learned lower appellate Court endorsed that the learned Magistrate rightly held that the respondent No.1 herein/appellant therein was caught red-handed along with the co-accused at the scene of occurrence. The respondent No.1 herein who is the owner of a tempo, used his tempo for transportation of goods. He was aged 30 years and the learned lower appellate Court had taken that into consideration while reducing the substantive sentence of six months to the sentence of Simple Imprisonment till rising of the Court, while maintaining the sentence of fine.

3. The appropriate sentence to be awarded, is within the discretion of the Court. The learned lower appellate Court has undoubted power to alter the sentence. The learned lower appellate Court has taken into consideration the young age of respondent No.1 and

also the fact that he was a first offender and in view of that, the learned lower appellate Court altered the substantive sentence. I have perused the Judgment of the lower appellate Court and I find that the learned appellate Court has exercised the discretion judiciously and, as such, no interference is called for by way of enhancing the sentence which was altered by the learned lower appellate Court.

4. In view of this, Criminal Appeal No.38/2001 is dismissed.

P.V. HARDAS, J.

ssm.